

FAX

Issues for Consideration in Developing a Local Court Rules Helpful Hints from the Pilot Court Experience

**1. Do you intend to accept documents by fax which require a fee?
(such as original filings, motions, etc.)**

If yes, then it is important to keep in mind that documents cannot be considered filed until the fee is paid. The two most common ways to handle this are:

1. Credit Cards. If you already accept credit cards for payment of other costs, this may be the most practical method, as it is the least labor intensive for court staff. If you do not presently accept credit cards, but wish to explore the possibility, check with local banks regarding transaction costs.
2. Escrow Accounts. Generally, the principal of an escrow account is that funds are deposited in advance by attorneys, and as they file documents requiring fees their account is debited for that amount. There are several clerical tasks associated with maintaining such a system, such as accounting records, debits and credits, balance reconciliation, etc., that the court should consider in deciding whether to undertake such an effort.

For many courts, the additional burden on staff that is required to accept documents with required fees may be too great, and they may opt to NOT accept documents which require fees.

2. Do you intend to charge a fee for receiving faxed documents?

The Administrative Order permits that a court may charge a fee in addition to any statutory fees to defray the cost of equipment, paper, supplies, and telephone lines. In determining whether to adopt such a policy, it is important to consider the administrative requirements of collecting such a fee. Most pilot courts which by local rule had such a fee had difficulty collecting the fee. The same issues discussed in question 1 are relevant here. If you decide to adopt a policy of charging a fee, it must be stated in the local court rule.

3. What hours should be established for receiving a fax?

The Administrative Order requires that the hours that faxed documents will be received by the court be established by local court rule. Generally, the hours should correspond to the hours of the court, except that you might consider a 15 - 30 minute cut-off at the end of the day to allow for the processing of any document received at the end of the day. In the local court rule, you might explicitly state that documents received after the stated time will be processed the next business day. Most of the pilot courts reported that it was convenient to leave the fax machine turned on 24 hours a day.

4. What is an appropriate number of pages in setting a page limit for faxed documents?

The Administrative Order requires that the maximum number of pages which may be faxed at one time be established by local court rule. Most pilot courts reported that the vast majority of documents faxed were not more than a few pages; thus, the page limit was not of much concern.

The range of maximums set by the pilot courts was 10 - 20 pages for transmission during business hours. No problems were reported.

5. How should attorneys and litigants be advised of the requirements for filing by fax?

The Administrative Order requires that the method of providing notice to attorneys and litigants regarding the requirements of filing documents by fax be included in the local court rule. Suggested methods include publication in the local bar newspaper, a copy of the notice and local court rule posted in the area where case filings are made, an article in the local newspaper, and mailing a copy of the notice and rule to attorneys with other notices.

6. What other things should be included in the local court rule?

The Administrative Order states that other reasonable requirements to promote efficient filing of facsimile documents be included in the rule. This can include any special requirements such as return receipts, cover sheets with required information, or special directions that are necessary.

7. Is it necessary to have the original document replace the faxed document in the file?

No. Attorneys should be advised to keep the original document and be able to present the original upon request of the court. If there are specific documents that must be held as originals, rather than faxed copies, you should include specific instructions in the local court rule.

8. After the local rule is drafted, where should it be sent?

Although it is the usual procedure to send local court rules directly to the Clerk of the Michigan Supreme Court so that they can be placed on the agenda for consideration by the Court, in this specific instance the draft rule should be sent to the Central Office of the State Court Administrator. After review, the draft rule will be transmitted to the Court directly from there. This process has been developed to expedite the processing of local rules.

9. Is it necessary to publish the local court rule for comment?

Yes. However, do not publish the local court rule for comment until it has been reviewed by the State Court Administrative Office. After the initial review by the State Court Administrative Office, you will be advised of when the local rule may be published for comment.